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Stakeholders' perceptions of the benefit of introducing an Australian intermediary system for vulnerable witnesses

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Vulnerable witnesses (e.g., children and adults with communication impairment) face many barriers to testifying and achieving justice when participating in the criminal justice system. To date, reforms have been implemented in Australia to address these, yet the barriers remain. Several other countries have implemented an intermediary scheme, whereby an independent third party assists vulnerable witnesses to understand the questions and processes encountered during interviews and trials, and helps witnesses to be understood. This study provides a qualitative analysis of stakeholders' (N = 25 professionals) perceptions regarding the potential benefits of implementing an intermediary scheme in Australia. While all participants demonstrated an open-minded attitude to new reform in this area, their perspectives did not support the introduction of an intermediary scheme at this time. Stakeholders highlighted the need for improved use and effectiveness of current measures, and expressed concern about adding further complication to the system.

Stakeholders' perceptions of the benefit of introducing an Australian intermediary system for vulnerable witnesses

Vulnerable witnesses, such as children or people with a physical, cognitive, social or communication impairment, face many barriers when accessing the criminal justice system. These difficulties have been well-articulated in previous research. Specifically, children and other vulnerable witnesses may struggle to understand the police interview or courtroom processes (Leggett, Goodman & Dinani, 2007). Deficits in expressive or receptive language, attention and memory may impact a witness' ability to answer questions, or they may be unable to give complete testimony due to anxiety (Leggett et al.), inappropriate or complicated questioning (Cederborg, Hultman & La Rooy, 2012; Cederborg & Lamb, 2007; Cossins, 2009) or delay between the alleged incident and testifying (Davies, Henderson & Hanna, 2010). Equally, police officers and prosecutors may underestimate the ability of vulnerable witnesses to provide credible testimony, leading them to abandon cases rather than proceed to prosecution (Gudjonsson, Murphy & Clare, 2000; Keilty & Connelly, 2001). For those cases that make it to court, juries may have unfair perceptions of the witness or their testimony, ultimately reducing the likelihood of conviction (Davies et al.; Stobbs & Kebbell, 2003; Sumner-Armstrong & Newcombe, 2007). Furthermore, it is well established that current judicial processes can be stressful for children and other vulnerable witnesses, thereby negatively impacting their ability to answer questions (Cossins, 2006; Davies, Devere & Verbitsky, 2004; Davies et al.; Goodman et al., 1992; Hoyano, 2007; Leggett et al.; Powell, 2005).

Over the years, a range of special measures have been implemented in Australia to try and address the barriers faced by vulnerable witnesses when engaging in the criminal justice system. Many of these reforms have focused on minimising the amount of time that a witness spends in the courtroom, such as the introduction of legislation no longer requiring child witnesses to testify at committal hearings, and allowing vulnerable witnesses to provide pre-

recorded evidence, or to testify via closed-circuit television, rather than face-to-face (Richards, 2009). Further measures to reduce the trauma experienced by child witnesses include modifying the courtroom environment to make it less intimidating (for example, by placing a screen between the complainant and the suspect, requesting that the judiciary remove their wigs and gowns, and clearing the public gallery during a child's testimony), and restricting the rights of the accused to personally cross-examine child witnesses (Richards). Reforms have also led to improved investigative interview techniques, new offence categories for cases where a child witness has difficulty particularising multiple offences, and the establishment of specialist sexual assault jurisdictions (Richards) and 'one-stop-shop' multi-agency sexual offence response centres (Powell & Cauchi, 2013).

Recent reforms in the area of child and vulnerable witness testimony have been instrumental in reducing the stress and trauma experienced by this witness group, and thus increased their ability to provide testimony and answer questions reliably (Cashmore & Trimboli, 2005; Richards, 2009). However, even these special measures have not entirely removed the barriers faced by vulnerable witnesses (Eastwood & Patton, 2002; Richards). Individuals with intellectual impairments and mental health disorders are under-represented in the criminal justice system (McCausland, Baldry, Johnson & Cohen, 2013; Attorney-General's Department, 2013). A recent report has highlighted that witnesses with communication and cognitive impairments still face an inability to access the support and communication aids needed to provide testimony (Australian Human Rights Commission, 2013). The report also highlighted negative assumptions about the admissibility of witness testimony and a lack of provision of specialist support for those considered unfit to testify. The impact of these remaining barriers is evidenced by the fact that there are poorer justice outcomes for crimes against children and other vulnerable witnesses (Australian Human Rights Commission, 2014; Richards, 2009).

One way of addressing the barriers to testimony still faced by vulnerable witnesses is to introduce a third party, referred to as an 'intermediary,' to the justice system. Intermediary schemes exist in a number of countries (Hanna, Davies, Henderson & Hand, 2013), but have not yet been introduced in Australia. Broadly speaking, the intended role of intermediaries is to facilitate effective communication between vulnerable witnesses and the people they encounter in the criminal justice system without a diminution in defendants' right to a fair trial (The Rt. Hon. The Lord Judge, Lord Chief Justice of England and Wales, 2012). There are many ways intermediaries potentially do this. For example, they may communicate to the witness questions that are put to them during an investigative interview or cross-examination in court, or request that questions be rephrased so that they can be adequately comprehended by the witness. Intermediaries may also help the witness to understand the complicated judicial process itself and become familiarised with the procedures and setting. Intermediaries may brief interviewing officers or the court on the witness' specific needs and limitations prior to the interview or trial, and suggest ways to maximise the witness' ability to provide accurate testimony and minimise his or her anxiety and trauma. Finally, intermediaries may assist investigating officers and the court to understand the witness' responses to questions, such as in the instance of witnesses with a speech impediment, language deficit, or alternative means of communication such a communication board. The fundamental role of the intermediary is to assist the criminal justice system. Despite working closely with witnesses, the police and the judiciary, intermediaries act as a neutral party and their paramount duty is to the court (Victims and Witnesses Unit, Ministry of Justice, 2012).

Intermediary schemes have been introduced to the process of interviewing and examination in several countries including England and Wales (*Youth Justice and Criminal Evidence Act 1999*), South Africa (*Criminal Procedure Act 1977*), Israel (*Law of Evidence Revision 1955*) and some Scandinavian countries (Myklebust, 2012). There are a range of models for the use of intermediaries, and their role during interviews or trials vary.

In South Africa, an intermediary does not intervene in questioning, and works in a similar way to an interpreter, listening to questions from prosecution and defence through an earpiece before translating them into language that is appropriate for the witness (*Criminal Procedure Act 1977*). The aim is to reduce miscommunication by translating questions (Matthias and Zaal 2011). The South African scheme has won praise and importantly, has been ruled to not undermine the fairness of the trial (*DPP (Transvaal) v Minister of Justice and Constitutional Development* [2009] 4 SA 222; Davies, et al., 2010, Matthias & Zaal 2011). The intermediary is usually a social worker (Cloughlan & Jarman 2002). Since its introduction in 1993, the South African intermediary system has not overcome several hurdles including lengthy delays, insufficient training to achieve consistency and recruitment and retainment problems (Matthias & Zaal 2011, p. 181).

In England and Wales, intermediaries undergo a stringent recruitment process and an intensive one-week training course (including examinations), focusing on relevant criminal law and procedure to assist with the application of specialist communication skills within the criminal justice setting (Victims and Witnesses Unit, Ministry of Justice, 2012). Centred on their expertise within their own professional practice (e.g., speech and language therapy, psychology, education), intermediaries in England and Wales are matched to witnesses based on the person's vulnerability, such as Autism Spectrum Disorders or the age of the child (Hanna, Davies, Henderson & Hand, 2013). Prior to a trial, the intermediary may formally assess the witness' communication abilities and furnish the court with a report, which suggests measures to assist during interviews or examination, such as scheduled breaks or comfort items. Further, they may attend a pre-trial conference with the counsel and judge to establish 'Ground Rules' for questioning (Hanna et al.). A Code of Practice and Code of Ethics (Victims and Witnesses Unit, Ministry of Justice) has been established in a bid to overcome the issue of conflict of interest, between owing duties to the court and supporting the witness. During investigative interviewing and/or examination intermediaries in England

and Wales may intervene to flag inappropriate questions which the asker is then directed to re-phrase in a manner that is in line with the communicative needs of the witness. The intermediary model used in England and Wales involves, in part, repeating and rephrasing questions.

Intermediary measures can also be found in Norway and Israel, although, the judicial process in those countries are substantially different to the Australian system, unlike the English and South African system which bear strong similarities. In Norway, specialist child interviewers are used to question vulnerable witnesses on behalf of both defence and prosecution during a video-recorded interview. This interview is overseen by a judge, and the recording is then played later at trial (Hanna et al.). Likewise, Israel has a system which utilises a specialist investigator, taking a video recorded statement from a child witness, usually within days of the offence (Henderson in Spencer & Lamb 2012, p. 61). The investigator is responsible for making an unreviewable decision about whether the child should testify in court and whether further questioning should take place at any stage (Pugach, 1997). If the child goes to court, the investigator may work to translate questions, similar to a South African intermediary (Henderson in Spencer & Lamb 2012). Alternatively, if the investigator deems that the child should not testify in court, usually because of potential trauma, the initial recorded interview is played in court and the investigator makes a judgment about the child's credibility (Henderson, 2012).

Addressed in this paper is whether a scheme that utilises a third party to aid the giving of evidence at either the investigative or examination stage, should be implemented in Australia. The use of intermediaries and an evaluation of what type of scheme would be beneficial has been considered in New Zealand (Hanna et al., 2013), and some moves have been made toward third party assistance in Australia (Richards, 2009). For example, some jurisdictions require that an 'appropriate adult' attend police interviews with children or adults with a cognitive impairment in order to assist with mutual communication and provide

emotional support (Spivak & Thomas, 2012). In cases where it is inappropriate for friends or family members to attend, trained volunteers known as Independent Third Persons take on this role (Spivak & Thomas). It is also worth noting that Western Australia has introduced a provision allowing 'child communicators' which appears to permit assistance from a third party (*Evidence Act 1906*; Richards). However, the legislative provision has not been accompanied by policy or guidelines and it is seldom used.

Specifically, the current study examined the feasibility and level of support among Australian stakeholders for an intermediary scheme by eliciting qualitative perceptions from a range of professionals who work in the justice system. The rationale for this approach is that police and judicial professionals are the front line workers who engage with vulnerable witnesses on a day-to-day basis, possess an in-depth understanding of the stages of the judicial process that these witnesses encounter, and can provide experience-based insight into the potential benefits and drawbacks of the implementation of an intermediary scheme. While stakeholder perceptions alone cannot necessarily predict the efficacy of an intermediary scheme in Australia, they are nonetheless a valuable means of understanding how this reform could be implemented, and practical, administrative factors which may help or hinder the effectiveness of its introduction. Worker practice plays an important role in shaping policy implementation, and improvements to the judicial process for vulnerable witnesses cannot be effectively devised without first understanding how they may be deployed on a practical level within an existing system.

Method

Participants

The participants in this study were 25 Australian professionals with extensive experience of working with vulnerable persons, predominantly child sexual assault victims and witnesses with disabilities. The final sample size was determined by data saturation, that is, when no new information was being obtained about the topics of inquiry . The sample was

heterogeneous, and comprised prosecutors, psychologists, child witness experts, police, a medical practitioner, child victim rights advocates (e.g., commissioners) a barrister and a judge.[1] Participants were recruited via word of mouth and were approached by the researchers directly, or via senior management. They were informed that participation was voluntary, and all except one person who was approached accepted the invitation to be involved. The study was approved by a university Human Research Ethics Committee and relevant police and legal organisations. To preserve the anonymity of participants, only broad descriptors are used in the results and no further demographics are provided.

Procedure

All interviews were conducted by the third author at the professionals' places of occupation (either in person or by phone) using a semi-structured, open-ended interview schedule in order to generate discussion about both the intermediary concept and its ability to resolve issues relating to obtaining evidence from vulnerable witnesses. Interviews ranged in duration from 19 to 94 minutes (M = 42 minutes). The questions devised and the recursive, conversational style of interviewing allowed participants to voice their perspectives, relay experiences and suggest appropriate courses of action. The researcher played a passive role in the interviews, inviting participants to share their opinions and experiences using the following open-ended prompts: (a) explain your background and current professional role within the field of child sexual abuse cases, (b) what is your opinion regarding the implementation of intermediaries in your jurisdiction at this time? (c) what practical issues need to be considered if, and when, courtroom intermediaries were to be used regularly in your jurisdiction?

Data management and analysis

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Please note that, due to ethical constraints, details of participants beyond their occupation will not be provided. However, quotes represent unique persons; multiple references to the same title are not multiple references to the same participant.

All interviews were audio recorded, transcribed verbatim, double-checked for accuracy, and de-identified. Initially, each transcript was subjected to open coding (Strauss & Corbin, 1990), which involved a line by line analysis of the transcripts (i.e., reduction) and identification of concepts within statements which can be described in terms of their possible meaning. Statements with similar concepts were thus grouped together. The transcripts were then re-examined for statements that supported the identified categories. Identified concepts and categories (and sub-categories) were then grouped according to core themes. Thus, the core themes identified helped to reduce the large volume of data into meaningful and parsimonious units of analysis (see Miles & Huberman, 1984). Quotations provided to illustrate the results of this study have undergone grammatical correction where necessary, and any potentially identifying details have been removed.

Results

All participants demonstrated an open-minded attitude to new reform and were keen to share their perspectives about the potential impact of an Australian intermediary scheme. Although the model in England and Wales was the scheme most often referred to in the interviews, various models were considered. The level of overt support for introducing an Australian-based intermediary system varied with some participants initially stating that they supported the idea and others vehemently opposed to its introduction. There was no distinguishable correlation between participants' occupation and their initial support or disapproval of an intermediary scheme. Irrespective of participants' support of the schemes, however, their perspectives tended to highlight practical limitations of introducing an intermediary scheme at this time. Overall, concerns about the introduction of an intermediary scheme focused around two key themes; the need for improved use and effectiveness of current measures and concern about adding further complication to the system. The participants' perspectives in relation to these themes are discussed in turn.

Improved use and effectiveness of current measures

The strongest theme to emerge from the interviews was that it is premature to introduce a new scheme to maximise witnesses' access to the justice system before ensuring that current measures (designed to address this very issue) are operating effectively.

A major consideration was the current gap between what is considered best-practice questioning by investigative and evidential interviewers (e.g., police, social workers, prosecutors and defence) and the actual questions used during the elicitation of witness statements and witness proofing, competency testing and examination. While interview guidelines for vulnerable witnesses dictate the need for non-leading, open-ended questions and language tailored to the witness' individual needs and developmental level, participants emphasised that such questioning was not standard practice. The main reason attributed to poor questioning was inadequate training. In fact, some professionals identified that their own limited training resulted in the use of complex or confusing questions, despite good intentions to question witnesses appropriately.

Professionals emphasised that if best practice questioning standards in investigative and evidential interviewing were adhered to, then the concerns underpinning the need for intermediaries would be substantially reduced. Without addressing the underlying problem of poor questioning, the intermediary scheme was merely perceived as a Band-Aid reform for a deeply dysfunctional justice system.

> "Professionals who are required to interview cognitively impaired or disabled children are supposed to be trained to do so effectively. I don't quite understand why we should introduce another specially trained person to do what should be the job of the specialist interviewers and other professionals." (Prosecutor)

> "No matter how good counsel is and how good the judge is none of us are properly trained in questioning vulnerable witnesses." (Prosecutor)

> "Assessing the most appropriate questioning standard is our job. One of the ways you come around kids who've got communication difficulties is you spend a lot of time with them working out what their language abilities are, what sort of questions they can answer, whether they get tired or distracted quickly. You spend heaps of time doing that so that when you come to call their evidence you can work out what to ask and the most appropriate way to do it." (Prosecutor)

Poor training and knowledge related to best-practice interview procedures was not the only factor reported to limit vulnerable witness' access to the justice system. Another reason for poor questioning related to the inherent nature of the trial process where leading, interrogative and complex questions appeared to be accepted practice during cross-examination of vulnerable witnesses. Importantly, damaging questioning is not limited to questions asked during cross-examination that are convoluted or nonsensical. Cross-examination that utilises child friendly language and confusing or deceptive tactics is less obvious, but also damaging. Half of the participants raised the point that cross-examination can be confusing even with the use of well crafted, non-aggressive and simply phrased questions. As such, participants doubted whether an intermediary (focused on ensuring the use of developmentally appropriate questions) could limit suggestibility arising from inappropriate questions phrased by defence.

> "The most devastating cross-examinations of children are by clever barristers who do the 'I'm your friend' routine. If you've got a good, sensible, smart barrister who is not overtly attacking the child, who is asking questions in a befriending manner but still using forms of questions that are apt to mislead or trick the child, I would be interested to know how the intermediary would intervene. In these cases, the questions are destructive but there is nothing ostensibly improper about them." (Prosecutor)

> "Cross-examination is a whole ball game in itself in terms of how that needs to be managed. I'm not sure whether intermediaries would in fact mitigate against the aggressiveness of cross-examination." (Child Witness Services)

Participants also mentioned several areas where current legislation, policy, guidelines and provisions designed to improve the quality of evidence elicited from vulnerable witnesses was not being implemented due to inadequate professional skill, knowledge or competency. One jurisdiction, for example had introduced the 'child communicator' provision into their evidence act, but there was no clear understanding of what the provision entitled the witness to, or what the actual role of the 'communicator' is.

> "It [child communicator provision] never really got off the ground. That's because there was no real training for child communicators, no regulations about who could be a child communicator, and discussion about when and how a child

> communicator should be used. Therefore nobody really ever thought to use them." (Child Witness Services)

When governments legislated for schemes that were not implemented properly due to poor inter-agency communication or support, this compounded the problem by creating the sense that government measures were futile and the barriers to justice insurmountable.

A major cultural shift as well as change in knowledge and skill level was deemed important prior to the implementation of any further change involving intermediaries. Without broad commitment to change, improvement was not deemed likely to happen. Inconsistency in judicial monitoring and knowledge of appropriate questioning was a particular source of frustration among many professionals. While judicial intervention in relation to poor questioning in the courtroom was perceived as crucial (particularly during the process of cross-examination), many participants stated that there was inconsistency between judges as to their willingness to support and implement such measures.

> **"**When we can't even get judges to rule questions as being oppressive, the thought that they would allow intermediaries to do so seems incomprehensible." (Prosecutor)

> "I have known judges to jump in and say to defence that the questioning is not appropriate. That's great, but it doesn't happen as often as it should." (Child Protection Worker)

> "Judges will think 'well I can understand these questions and I'm a person of the world and I know kids, I've brought up my own and I've done that wonderfully well and I know what's happening.' Often they overestimate their ability to detect an inappropriate question because they have led a sheltered and privileged life." (Judge)

The important role of the judiciary in shaping professionals' behaviour was emphasised throughout the interviews.

> "It's the responsibility of judges to reprimand defence counsel and embarrass prosecutors if they ask questions of witnesses that are clearly inappropriate. When they embarrass people into asking questions again properly, this motivates those people to learn to ask children questions responsibly." (Prosecutor)

Adding complication to the system

Participants raised many concerns specifically related to the intermediary role, which centred around three issues. The first issue, mentioned by almost all participants, related to the

possible conflict between an intermediary's roles and duties. On the one hand, they perceived the intermediary to be supporting the witness and developing a rapport with them. On the other, they felt that the intermediary would be acting as an expert witness, and thus owes a duty to the prosecution. This dual role (whether intended or not) may inadvertently inhibit a witness's ability to give evidence and undermine the integrity of the system.

> "If the support person was also going to be the communicator there is a potential conflict between the sort of supportive response that is focused on the child's emotional needs and the communicative response that is focused on the evidentiary needs of the court." (Psychologist)

> "Do we have two people sitting in there, one who is mindful of the child's sort of stress levels and another one who is mindful of the evidence and the court's needs? Or do we have one person who does both? Where are they meant to tilt if the child's needs and the court's needs are not the same or in conflict as it will be from time to time?" (Psychologist)

> "It looks like everybody's protecting the child from the accused man who's already been painted as a baddie. That has the potential for people to think 'why are we protecting them so much?'" (Prosecutor)

Given the issues raised above, the participants felt the intermediary's role would need to be clearly defined as either supportive or communicative. For witnesses who have a disability that impacts their ability to communicate with people, participants could see a benefit in having an intermediary for facilitating communication. However, it was noted that this role would be more like an interpreter rather than someone who would also support the witness.

> "In court they quite clearly have to be expert, they have to be skilled, they have to be independent and that independence is critical because they have to fit into a system that is premised on the basis that this person is presumed to be innocent and this person has the right to a fair equitable process. An expert in that context is not allowed to be a barracker." (Victims' Rights Advocate)

The second concern about the intermediary scheme related to establishing and maintaining competency. All participants were concerned that the level of specialisation, skill and knowledge that an intermediary must have was exceptionally high, and this in turn led to the practical problem of maintaining a sufficient network of people capable of acting as an intermediary. Intermediaries needed to be experts not only in child development and

disabilities (if any) but also testimony, language and legal process (e.g., court processes and rules of evidence). For many participants, the role of an intermediary (even in a purely communicative role) was much more complex than that of an interpreter. For example, re-asking a question that was possibly understood the first time may actually lead the witness to interpret that they answered the question incorrectly and should change their answer. In some cases, a leading question is considered entirely appropriate. The level of knowledge in relation to when and how to alter the communication process is very high and open to dispute.

> "We've got reasons for asking particular questions in a particular order and in a particular way. Those reasons are not necessarily clear to people outside our profession. In a particular situation it may be necessary to ask a leading question in a certain way because a piece of relevant evidence has been excluded. The prospect of being interrupted in that endeavour by an intermediary makes me feel nervous." (Prosecutor)

> "You need someone who's very knowledgeable about child development and children's language, very knowledgeable about law of evidence and court procedures and how investigations occur and also very skilled in communicating with children. It's an almost impossible ask, do you get a PhD in child psychology, who's also got a law degree, who's also the right personality and then pay them enough so that they'll stay there more than two years so you don't have to keep turning over staff? You need to select out all the campaigners as well who are going in there with their own agenda, who will do well in training but then go and do something else on the job." (Psychologist)

Maintaining a network of experts with the level of qualification and training necessary, was deemed unrealistic and if achieved, would be extremely difficult to maintain without immense financial burden to an already under-resourced system.

> "It is an expensive process to have trained accredited intermediaries and it is another element that can add to the delay in proceedings because of the potential limitations in availability of these people." (Victim's Rights advocate)

> "There are so many complicating features and the first thing everyone is going to say, 'we haven't got the money for this in a million years'. If you're going to spend the money on the intermediary, give it to us and we'll train the prosecutors better, or we'll give the judges further training. If you're looking at the pot of gold that's known as government money that's where I'd rather see it spent." (Prosecutor)

Participants with direct knowledge of the system operating in England queried whether the one week training program offered to train English intermediaries was sufficient to establish and ensure expertise, even when potential intermediaries had existing qualifications and experience. Further, several participants identified that there was not sufficient ongoing training in the English system.

> "It's one thing to train intermediaries in those skills and then at the end of the training course they're competent. It's another thing to have them still competent two years and three years down the track. This is an issue of ongoing refresher training, supervision and critical feedback on their performance." (Psychologist)

The third concern related to the intermediary scheme was the potentially detrimental effect associated with introducing another player to the system. Adding another person to the court or investigative interview was perceived to potentially exacerbate witness anxiety, especially if the intermediary sits with the witness, as opposed to taking a purely advisory role. Further, the scheme could open up the potential for disputes about the intermediary which could cause considerable delays. For example, if prosecution called the intermediary, would defence have the right to question or appeal the decision of that intermediary and call another expert? As such, most participants preferred to extend current roles within the justice system, rather than introduce another person into the system.

> "Introducing another person into a child's life is quite problematic and, particularly around all these court issues, because they see a lot of people, they see interviewers, they see counsellors, they see prosecutors. To introduce another person that a child has to build a rapport with and get to know, someone that's called an intermediary, that's never met the child before, that is not child friendly." (Child Witness Service professional)

> "What if defence counsel go 'Your Honour, they're [the intermediary] just being overprotective, it was a perfectly simple question'?" (Prosecutor)

> "At some point the prosecutor needs to be able to build up a rapport with these kids. When you're trying to lead evidence from them, we're getting more and more barriers between us and the kid. At some point, we're just going to stop talking to the child at all. We've already got the visually recorded interview, so we just sit down and let the defence counsel have a bash at them. I don't mind there being an intervention there, it's just we've become more isolated from the

> process the less we talk to the child and if there's another person in the middle talking for the child, you interrupt the flow." (Prosecutor)

Discussion

The major conclusion to arise from this study is that the introduction of an intermediary scheme in Australia would not currently be met with widespread support by professional stakeholders. Overall, two main issues were raised by the participants. First, stakeholders were concerned that it would be premature to introduce a costly scheme aimed at maximising witnesses' access to the justice system before ensuring that current measures (designed to address this very issue) were operating effectively. While judicial intervention in relation to poor questioning in the courtroom and cross-examination tactics were issues of concern, the primary issue identified was the gap between what is considered best-practice questioning by investigative and evidential interviewers and the actual questions used during the elicitation of witness statements and witness proofing, competency testing and examination.

When considering the broader interviewer evaluation literature, there is support for stakeholders concerns about the need for widespread improvement in professionals' interview performance. It is well-established that the use of non-leading open-ended questions is the best way of enhancing evidential quality of vulnerable witnesses. Open-ended questions are those that encourage elaborate detail without dictating what specific information is required (Powell & Snow, 2007). In relation to response accuracy, open-ended questions minimise individual differences in responding arising from variability in memory, language and social skills (Agnew & Powell, 2004). All witness groups respond with high accuracy to open-ended questions and the decline in accuracy in response to specific (e.g., Who What When Where) questions, compared to open-ended questions, is greater for vulnerable witnesses. The discrepancy between recommended and actual practice is widespread, revealing itself in almost every interviewer performance evaluation across the globe, and is best understood in the context of inadequate professional training (Powell, Fisher & Wright, 2005). Without

widespread improvement in interviewing standards, the intermediary scheme would have limited benefit, particularly if focused at the trial phase.

Participants also raised concerns specific to the intermediary role. These centred around three issues which included (a) possible conflict between an intermediary's perceived role in supporting witnesses versus their role of informing the police and judiciary akin to an expert witness; (b) problems in establishing and maintaining intermediary competency; and (c) the potentially detrimental effect associated with introducing another party to the system on witness anxiety and delays in trial process. Some of these concerns echo challenges of the scheme faced in some countries. For example, inadequate training, lack of resourcing, and apparent interference with the defendant's right to a fair trial have reportedly undermined the effectiveness South African intermediary scheme (Coughlan & Jarman, 2002; Henderson, 2012; Matthias & Zaal, 2011). With regards to the intermediary scheme in England and Wales, appropriate procedures and measures, particularly 'Ground Rules' hearings, are not followed in all instances where an intermediary is used (Cooper & Wurtzel, 2013). Further, misunderstandings concerning the objectives and role of intermediaries within the justice system have also been highlighted (Plotnikoff & Woolfson, 2007). The extent to which intermediaries can actually intervene or correct for inappropriate questions is a major apprehension (Davies, Henderson & Hanna, 2010). Concerns about role conflict, availability of competent staff with sufficient knowledge of legal process, and complications to trial process are also reasons alleged by Australian judicial professionals for the underuse of other third parties, such as interpreters during the criminal justice process (Hale, 2011; Lee 2009).

In the absence of formal independent evaluation data involving the impact of intermediaries across all countries where such models are in place, it cannot be concluded whether or not the costs of implementing an intermediary scheme in Australia would outweigh the benefits. Nonetheless, the concerns raised by the professionals in this study are legitimate and warrant consideration. Professional support plays an integral role in the implementation

and success of any new scheme - the literature is replete with examples of implementation gaps at the point of service delivery due to front-line issues unforseen by policy makers (e.g., Australian Human Rights Commission, 2013; Harvard University, 2014; Hill & Hupe, 2002; Lipsky, 1980).

Based on the current findings, our recommendation is to focus on increasing the knowledge and skill level of the key players already in the system (i.e., investigative and evidential interviewers, judicial officers), whilst also following the ongoing progress and efficacy of the models in other countries. Only upon substantial address of the challenges faced by the current system in Australia; rigorous evaluation of the benefits and difficulties encountered by other models; and development of clear guidance, policy and legislation around the use of intermediaries, should consideration be given to the possible implementation of such a scheme. Fortunately, Australia is now making great strides toward ensuring consistency and quality in training for investigative interviewers (Powell & Barnett, 2013). Further, there is sufficient knowledge, resources and professional expertise currently available, which could be utilised to provide more effective support for professionals who interview vulnerable witnesses at the trial stage as well.[2]

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[2] The resources and professional services currently available are spread between state and federal government departments as well as non-government organisations. Currently the Human Rights Commission is compiling a list of services that can be used by those with a disability to allow them better access to justice, people are invited to contribute to or view the database via the Commission's website https://www.humanrights.gov.au/our-work/disability-rights/current-projects/call-out-programs-and-services-assist-people-disability.

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